



OFFICE OF THE STAFF JUDGE ADVOCATE
101ST AIRBORNE DIVISION (AIR ASSAULT) AND FORT CAMPBELL
CLIENT SERVICES
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TENNESSEE DIVORCE

Eligibility for Divorce in Tennessee.

Tennessee residents and persons residing in Tennessee for at least six months may file for divorce in Tennessee. Please note, any address on Fort Campbell is considered Kentucky for family law purposes under KY §403.140

Grounds for Divorce. Tennessee provides for both "no-fault" and "fault" divorces. "Fault" based divorce normally requires litigation and therefore is more expensive than "no-fault" divorce. A "no-fault" divorce requires irreconcilable differences as the ground for divorce. This means you must only show marital breakdown with no reasonable prospect for reconciliation. In Tennessee, a "no-fault" divorce will only be granted if the parties agree on all issues, including child custody and division of property. If there is disagreement on any issue the divorce must be grounded on fault. Grounds for a divorce based on fault include adultery, desertion, conviction of a felony, etc. You and your spouse are encouraged to consider counseling and reconciliation. Contact your unit chaplain or the Family Life Chaplain. You may also obtain Marital Counseling through the Department of Social Work Service.

Cost and Length of Divorce. The cost to obtain a divorce depends primarily on whether it is uncontested or contested. An uncontested divorce is one in which the parties agree to all matters. A contested divorce is one in which the parties are unable to agree on at least one issue. In general, an uncontested case will cost about \$300-\$600. Since the cost may be much greater for contested cases, couples should attempt to discuss and agree upon key issues to reduce the cost of a divorce. Always discuss the cost of your divorce with your private attorney. Make sure you understand what legal services you receive for the quoted fee. An uncontested case averages 60 to 90 days to finalize, depending on whether there are minor children involved. A contested case may take much longer.

Support Requirement. Until a divorce is final, a soldier must support his/her spouse in accordance with AR 608-99. The amount of support will be determined by the BAH RC/T schedule (see DFAS website), assuming there is no court order or written agreement between the parties. See Family Support info paper for more information.

Divorce Issues. Typical issues to be decided during a divorce are custody and visitation of children, distribution of property (which may include an agreement on how retirement benefits will be divided), who pays what debts, child support (there are state guidelines which the court almost always follows), who gets the dependent tax exemptions, and relocation of the non-military spouse. The final divorce decree will also contain a parenting plan.

New Wills. If you are in the process of obtaining a divorce or you just finalized one, it is advised that you execute a new will. This will ensure that your assets are distributed in accordance with your wishes.

FREQUENTLY ASKED QUESTIONS

Who gets to claim the children on the tax return? Normally the spouse who has custody claims the children. However, an agreement or court order can allow the non-custodial parent to claim the children or alternate annually which parent may claim the children.

Who determines the amount of child support? The parties may agree to an amount higher than, lower than, or equal to the state's child support guidelines. However, if the parties cannot agree, the court will determine the amount based on the state child support guidelines.

Can my spouse receive any of my retired pay? There is no federal right to retired pay. However, under Tennessee law military retirement pay is divisible marital property. The portion of retired pay a spouse may be entitled to depends upon the length of the marriage and the time the marriage overlapped with military service. A common formula is the number of years of marriage divided by the number of years the marriage overlaps with the military service, multiplied by 1/2. If a court decides to divide the retirement pay, usually the spouse will not receive his/her portion until the soldier retires. For more information, check the Uniform Services Former Spouses Protection Act (USFSPA).

Can we use the same lawyer? In an uncontested divorce, it is possible for only one spouse to hire a lawyer but it is important to remember the lawyer is only working for the paying party. If both spouses feel the need to consult with a lawyer, or if the spouses cannot agree on important issues, it is recommended that the parties hire separate lawyers.

Who pays for the lawyer? In an uncontested divorce, the parties can agree to split the cost of one attorney. In a contested divorce, each party will probably pay his/her own attorney's fees. The court can also order one spouse to pay all or some of the other spouse's attorney's fees.

If the divorce decree requires my spouse to pay certain debts, what happens if he fails to pay them? You remain fully liable for any joint debts. Your divorce decree has no effect on the creditor to whom the money is owed, though it may entitle you to sue your former spouse for amounts you are required to pay.

Will I have to pay (or can I get) alimony (spousal support)? Either spouse may request alimony. The court may award alimony based on the need of one spouse to receive it and the ability of the other spouse to pay it. The parties can also agree to the payment of alimony.

TENNESSEE UNCONTESTED DIVORCE

An uncontested divorce is where both parties are able to agree on the division of property, custody of children, and join together in filing the appropriate paperwork. To file an uncontested divorce **"Pro Se"** (self-representing), in the state of Tennessee, do the following:

1. Go to www.SELEGAL.org. Click on "Helping Yourself" and then "Divorce." Read the information on uncontested divorce.
2. Download the following forms: Complaint for Divorce, Marital Dissolution Agreement, and the Final Decree of Divorce. If you and your spouse have children together, also download the Permanent Parenting Plan. The Final Decree of Divorce will be filed at your court date.
3. Complete all required fields in the forms, typing if possible. You must complete these forms to the best of your ability before seeing a Fort Campbell Legal Assistance attorney. Make notes and write down your questions to ask the attorney during your appointment.
4. After you have completed the above steps, then you can make an appointment with the Client Services Office to have a Legal Assistance attorney review your documents.
5. Before your appointment, review our office's information papers on Divorce, Hiring a Civilian Attorney, Family Support, and Child Custody.
6. Following your appointment with the attorney and completion of the divorce documents, both parties must have them notarized. We provide this service at our office.
7. File your divorce papers with the Montgomery County Clerk & Masters Office. At this time you will pay either \$222.50 (with no children) and have a mandatory 60 day waiting period, or \$297.50 and have a mandatory 90 day waiting period.
8. Your court date will be set by the County Clerk & Masters Office.
9. With an uncontested Tennessee divorce, only one party must be present in court. No attorneys have to be involved. Please note that Fort Campbell Legal Assistance attorneys cannot represent you in court.